

**REPLY UNDER 37 CFR 1.116
-EXPEDITED PROCEDURE-
EXAMINING GROUP 3623**

REMARKS

This amendment is submitted with a Request for Continued Examination.

Claims 1 - 62 are pending in the application and are presented for reconsideration.

Claims 25-32 and 47-52 have been withdrawn from consideration. Claim 62 has been added.

Based on the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding rejections, and withdraw them.

Drawings

There is no indication in the Office Action regarding the acceptance of the drawings.

Applicant requests the Examiner to indicate acceptance of the drawings.

Rejections under 35 U.S.C. §102

The Examiner has rejected claims 1-14, 16-24, 33, 35, 37-41, 43, 45-46, 53-55, 57-58 and 60-61 as allegedly being unpatentable under 35 USC section 102(a) over an article entitled “Webvan: Rewriting the Rules On ‘Last Mile’ Delivery”, authored by Jean Murphy (hereinafter “Murphy article”). The Examiner has rejected claims 15, 34, 36, and 44 under the obviousness provisions of 35 U.S.C. §103 as allegedly being unpatentable over the Murphy article.

Applicants respectfully traverse these rejections because the Murphy article does not predate either the November 13, 2001 filing date of this application or the December 22, 2000 priority date of this application.

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Applicants note the Murphy article includes a copyright notice of year 2002. Applicants submit that year 2002 is the earliest date that the Patent Office may assert as the publication date of the Murphy article absent an independent authentication of the earlier alleged publication date. Because the Murphy article bears a year 2002 copyright notice, the August 2000 date cannot be used as a publication date of the Murphy article. With a publication date of year 2002, the Murphy article is not a section 102(a) reference.

Even though Applicants do not have the burden of proof of authenticating the date of the Murphy article, Applicants attempted to find a printed magazine containing the Murphy article. Applicants' attempts were unsuccessful. They did not find a printed magazine of the Murphy article. Applicants request the Patent Office note whether they found the Murphy article as a result of a search or a submission by a third party.

The undersigned attorney of record attempted to find an Internet verification of the publication date of the Murphy article. The undersigned attorney of record attempted to retrieve the article at archive.org, a website that stores web pages and provides a source of web pages that have disappeared from the world wide web. Appendix I is a printout of the dates available for the domain www.glscs.com that published the Murphy article. The earliest date available after the alleged publication date of August 2000 is September 14, 2000. The archived page of September 14, 2000 shown in Appendix II gives no indication of the Murphy article. The undersigned attorney of record was unable to find an independent verification of the publication date of the Murphy article.

In paragraph 2 of the Office Action, references 1-U, 1-V, 1-W and 1-X are cited as listings of the Murphy article that lists the Murphy article as being published in 2000 and these

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references include a copyright notice of 2002. Applicants note that a date of copyright is for "the year of first publication of a work." Specifically, a work published in the US may include a copyright notice on publicly distributed copies. Section 401(a) of the title 17, the copyright law provides:

Whenever a work protected under this title is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section may be placed on publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device.

Further the copyright notice shall include the year of first publication. Section 401(b) of the title 17, the copyright law provides:

(b) Form of Notice. - If a notice appears on the copies, it shall consist of the following three elements:

(1) the symbol G6&169; (the letter C in a circle), or the word "Copyright", or the abbreviation "Copr."; and

(2) the year of first publication of the work; in the case of compilations, or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying text matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful articles; and

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(3) the name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

(emphasis added).

Thus, the Murphy article with the 2002 copyright notice indicates that the Murphy article at best was published in 2002.

It is asserted in the office action that listing reference includes articles published in 2003-2006. As a derivative work, namely, the listing gets updated with new articles, the listing need only include the earliest publication date of the list, which based on the copyright notice is 2002.

References 2-V and 2-U are cited in the office action as 1997 and 2005 articles, respectively, with copyright dates of 2002. Applicants' argument regarding the Murphy article apply to reference 2-V, namely, only a 2002 first publication date may be used for reference 2-V for the same reasons. For the copyright notice to be accurate, Reference 2-U appears to be a derivative work, perhaps published in June 2005, which Applicant does not concede, and appears to be a derivative work of something published in 2002.

The Examiner asserts "the 2002 copyright is directed towards the publisher and/or website, and not the publication date of the articles." Applicants attempted to locate paper magazines of the articles, and were unsuccessful. It appears the Supply Chain Brain is purely an online entity. Thus it is impossible to separate copyright notices of the publisher from the articles.

Applicants accessed the Murphy article on the Internet at the URL on the bottom of the copy provided by the Patent Office. Applicants note that the heading “Webvan@Work” and the sections under this heading that are labeled 1B, 2B, 3B, 4B and 5B in the copy provided by the Patent Office are in a dark blue background with white font, in contrast to the main text of the article which is in a black font with white background. Further the font size appears to be a different size in the “Webvan@Work” section. This is clearly seen in the copy of the Murphy article provided by the Patent Office. In contrast, the other section “Webvan Economics” has a yellow background and black font matching the main article which appears to conform to how other articles are normally presented. Thus, the “Webvan@Work” section does not conform to normal article highlights, contains a different font from the rest of the Murphy article and appears to have been at a different time, and most likely in 2002. (Applicants also note that they have reviewed over 50 articles of the publisher selected at random on their website. Applicants note that none of these article had a similar blue background or font change.)

In paragraph 2 of the Office Action, it is asserted that the wording is consistent between the two portions of the article. Applicants are not asserting that they are written by two different writers, but that the font and background indicate that the heading “Webvan@Work” and the sections under this heading that are labeled 1B, 2B, 3B, 4B and 5B in the copy appear to be written at a later time, and most likely in 2002 in order for the copyright notice to be accurate. Based on the copyright notice, Applicant asserts that the entire article was published at best in 2002, but may have been written at different times. It is also asserted that browser setting or printer setting may change font sizes. Applicants assert that for a given article, the browser setting or printer setting will not change font sizes within the article if it is inserted into the

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webpage at one time. Applicants note the section at issue appears to be a different font and size, and thus assert that the section at issue appears to have been inserted at a later time, namely 2002 in order to comply with copyright law.

Because the Murphy article is not a proper 102(a) reference, the Murphy article cannot render claims 1-14, 16-24, 33, 35, 37-41, 43, 45-46, 53-55, 57-58 and 60-61 unpatentable. Therefore, it is respectfully submitted that the rejection is improper and should be withdrawn.

Applicants add claim 62. The Murphy article does not disclose or even suggest “the delivery site being determined for availability to the group of purchasers using criteria other than residences of said ones of the group of purchasers” or “an order being for a purchaser and not for the association between the delivery site and said group of purchasers” as recited in new claim 62.

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Conclusion

Applicant believes that all of the stated grounds of objection and rejection set forth by the Examiner in the Office Action have been properly accommodated or addressed. Applicant, therefore, respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and withdraw them. The Examiner is invited to telephone the undersigned representative if it is felt that an interview might be useful for any reason.

Respectfully submitted
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